
Legal and Administrative Framework

1. National Environmental Management Act

The NEMA provides a framework for cooperative environmental governance between the various spheres of government, by establishing principles for decision-making on matters relating to the environment. Furthermore, the NEMA promotes integrated management to ensure sustainable resource utilisation and development and requires that the DEA be the lead agent in ensuring effective custodianship of the environment. It also provides that sensitive, vulnerable, highly dynamic or stressed ecosystems, such as wetlands, and similar systems require specific attention in management and planning procedures, especially where subjected to significant human resource usage and development pressure.

The NEMA principles as contained in Section 2, essentially guide the interpretation, administration and implementation of the Act and any other law concerned with the protection of the environment. An overarching emphasis of the principle is that development must be environmentally, socially and economically sustainable. It is also stated that sustainable development requires the consideration of, *inter alia*, the following factors:

- that pollution and degradation of the environment are avoided, or, where they cannot be altogether avoided, are minimised and remedied;
- that waste is avoided, or where it cannot be altogether avoided, is minimised and re-used or recycled where possible and otherwise disposed of in a responsible manner;
- that the use and exploitation of non-renewable natural resources is responsible and equitable, and takes into account the consequences of the depletion of the resource;
- that the development, use and exploitation of renewable resources and the eco-systems of which they are part do not exceed the level beyond which their integrity is jeopardised; and
- that negative impacts on the environment and on peoples' environmental rights be anticipated and prevented, and where they cannot be altogether prevented are minimised and remedied.

The EMPr must be strictly adhered to, as it is compiled specifically to ensure that adequate mitigating measures will be taken to minimise the negative effects of the development. Typical conditions include, but are not limited to:

- measures to prevent, manage and mitigate environmental impacts to acceptable levels;
- prevention of pollution of water bodies and groundwater;
- rehabilitation programme for disturbed natural and/or heritage areas;
- appointment of an ECO to oversee the construction phase and to ensure that the development phase is conducted in an environmentally responsible manner;
- conservation management and visitor management plans; and
- requirements of other authorities, such as the Department of Water and Sanitation (DWS), and the South African Heritage Resource Agency (SAHRA) and/or relevant provincial authorities.

2. National Heritage Resources Act

The National Heritage Resources Act (No. 25 of 1999) (NHRA) is the primary statute regulating the protection and management of South Africa's heritage resources. The NHRA aims to promote good management of the national estate, and ensures community participation in the protection of national heritage resources and involves all three levels of government (national, provincial and local) in the management of the country's national heritage. The South African Heritage Resources Agency (SAHRA) is the enforcing authority for the NHRA. However, within the Western Cape Province, Heritage Western Cape (HWC) is the competent authority. The national estate includes but is not limited to places, buildings, structures and equipment of cultural significance, places to which oral traditions are attached or which are associated with living heritage; historical settlements and townscapes, landscapes and natural features of cultural

significance, geological sites of scientific or cultural importance, archaeological and paleontological sites, graves and burial grounds, and sites of significance relating to South African history and movable objects.

A variety of formal protection measures are provided for in the NHRA, ranging from national and provincial heritage sites, protected areas, provisional protection, inclusion on the heritage register of a province, heritage areas and heritage objects legal protection of paleontological and archaeological sites (including rock art) and meteorites, burial grounds and graves, and the protection of structures older than 60 years and public monuments and memorials.

In terms of Section 34 (1) of the National Heritage Resources Act, 1999, no person may alter or demolish any structure or part of a structure which is older than 60 years without a permit issued by the relevant provincial heritage resources authority.

3. National Water Act

The National Water Act (No. 36 of 1998) (NWA) provides a framework to protect, develop, conserve and manage the nation's water resources. Water use is defined broadly in terms of NWA, and includes taking and storing water, activities which reduce stream flow, waste discharges and disposals, controlled activities (activities which impact detrimentally on a water resource), altering a watercourse, removing water found underground for certain purposes, and recreation. In general a water use must be licensed (in terms of Section 21) unless it is listed in Schedule 1, is an existing lawful use, is permissible under a general authorisation, or if a responsible authority waives the need for a licence. Section 21 of the NWA lists the water uses for which authorisation under the Act is required.

The NWA also provides for pollution prevention measures, with particular emphasis on water resource pollution. In accordance, the licensee shall ensure that activities impacting upon water resources and effluent releases are monitored for compliance with the applicable regulations. Emergency incidents involving water resources are included in the Act, requiring the polluter to remediate and mitigate the impacts of such an emergency incident.

In the context of the proposed project and any potential impact on water resources, there are two aspects of the NWA which are of key importance. The first is the mechanism for authorising various water uses (as detailed in Section 21 of the NWA). If any water uses are to be undertaken as part of the project they will need to be authorised in accordance with one of the mechanisms created under the NWA, which include Schedule 1 water uses, generally authorised water uses and licensing of water uses.

In terms of Section 19 of the NWA "An owner of land, a person in control of land or a person who occupies or uses the land on which any activity or process is or was performed or undertaken; or any other situation exists, which causes, has caused or is likely to cause pollution of a water resource must take all reasonable measures to prevent any such pollution from occurring, continuing or recurring". These measures may include, but are not limited to:

- Measures to cease, modify, or control any act or process causing the pollution;
- Compliance with any prescribed waste standard or management practice;
- Containment or prevention of the movement of pollutants;
- Remediation of the effects of the pollution; and
- Remediation of the effects of any disturbance to the bed and banks of a watercourse.

Construction-related activities which will impact upon water resources normally require the issue of a license for such activities in accordance to Section 21 of the NWA.

4. Other Applicable Environmental Legislation

A limited scoping of relevant legislation was undertaken to identify the key legal issues related to the proposed project. Applicable key environmental legislation, which must be considered during the implementation of the proposed project is summarised in Table 1.

Table 1: List of Applicable Legislation and Guidelines

Legislation	Sections	Relates to:
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Legislation	Sections	Relates to:
The Constitution (No. 108 of 1996)	Chapter 2	Bill of Rights
	Section 24	Environmental rights
	Section 25	Rights in property
	Section 32	This section provides that every person has the constitutional right of access to information held by the state, including for example a state department such as the DEA, and any information held by another person in so far as that information is required for the exercise or protection of any of their rights, including their environmental right.
	Section 33	The Constitution entitles everyone to administrative action that is lawful, reasonable and procedurally fair and if one's rights have been adversely affected by administrative action one has the right to be given written reasons for the decision.
Environment Conservation Act (No. 73 of 1989) and regulations		Although the ECA has been substantially repealed by the NEMA and the NEM:WA, certain Regulations promulgated under the Act remain in effect. Of importance are the National Noise Control Regulations.
National Environmental Management: Protected Areas Act (No. 57 of 2003)		The National Environmental Management: Protected Areas (NEM:PA) Act No. 57 of 2003 was signed into law on 18 February 2004, and came into operation on 01 November 2004. The aim of the Act is to provide for the protection and conservation of ecologically viable areas representative of South Africa's biological diversity, natural landscapes and seascapes. The Act operates in conjunction with the National Environmental Management: Biodiversity Act No. 10 of 2004.
National Environmental Management: Biodiversity Act (No. 10 of 2004) (NEM:BA)	Sections 65-69	These sections deal with restricted activities involving alien species; restricted activities involving certain alien species totally prohibited; and duty of care relating to alien species.
	Sections 71 and 73	These sections deal with restricted activities involving listed invasive species and duty of care relating to listed invasive species.
	Alien and Invasive Species regulations in terms of section 97 (1).	
	Chapter 2	Categories of listed invasive species.
Conservation of Agricultural Resources Act (No. 43 of 1983) and regulations	Sections 2, 5, 6	Implementation of control measures for soil conservation works as well as alien and invasive plant species in and outside of urban areas.
National Environmental Management: Air Quality Act (No. 39 of 2004)	Section 32	Measures for the control of dust
	Section 34	Measures for the control of noise
	Section 35	Measures for the control of offensive odours
	Chapter 5	Licensing of listed activities
	Schedule 2	Ambient air quality standards
National Environmental Management: Waste Act (No. 59 of 2008)	Section 16	General duty in terms of waste management
	Section 17	Reduction, re-use, recycling and recovery of waste
	Section 20	No person may commence, undertake or conduct a waste management activity, except in accordance with: <ul style="list-style-type: none"> the requirements or standards prescribed by said Act and regulations; and a waste management licence issued in respect of that activity, if a licence is required.
	Section 26	Prohibition of unauthorised disposal of waste
	Section 27	Prohibition of littering
	Section 35 - 38	Contaminated land
	Section 66	A waste impact report must be compiled to assess the impact during the storage of hazardous waste, construction of site camps and storage of stockpiling.
South African National Roads Agency Limited and National Roads Act, 1998 (No. 7 of 1998): 1. Damaging a National Road	Section 46 (5)(a) and (b)	The Agency may issue a written notice demanding that the owner or occupier prevents or stops any activity that may cause damage to a national road. The demand may include, among others, the removal, filling in, alteration, relocation or establishment of any dam, canal, trench, wall, sluice, pipe, excavation, structure or other works, or the cessation of such an act, on the land.
	Section 46(3)	The owners or occupiers of land adjoining any national road must: <ul style="list-style-type: none"> Take all measures on their land that are reasonably necessary to prevent the occurrence of any damage to the national road concerned. Refrain from doing or permitting anything on or below the surface of that land which is likely to cause damage to that national road.
	Section 46(4)	The owner or occupier of any land adjoining a national road will be held liable for any damage to the national road which was or reasonably should have been foreseen.
South African National Roads Agency Limited	Section 48(1)	No person may do any of the following without the Agency's permission: <ol style="list-style-type: none"> On or over, or below the surface of, a national road erect, construct or lay, or establish

Legislation	Sections	Relates to:
and National Roads Act (No. 7 of 1998): 3. Structures and other works on, over or below national roads or certain other land	Section 48(5) Section 48(8)	any structure. b. Make any structural alteration or addition to a structure situated on or over, or below the surface of a national road. c. Give permission for either (a) or (b). The Agency may give written notice for the removal of any such structure, or may remove the structure and recover the costs from that person. Any person who contravenes this section is guilty of an offence and liable to one year in prison and/or a fine.
Occupational Health and Safety Act (No. 85 of 1993) and regulations	General Administration Regulations GN R929 of June 2003 Section 8 Section 9	Material Safety Data Sheets must be made available at the request of any interested or affected party. General duties of employers to their employees. General duties of employers and self-employed persons to persons other than their employees.
Fencing Act (No. 31 of 1963)	Section 17	Any person erecting a boundary fence may clean any bush along the line of the fence up to 1.5 metres on each side thereof and remove any tree standing in the immediate line of the fence. However, this provision must be read in conjunction with the environmental legal provisions relevant to the protection of flora.
Hazardous Substances Act (No. 15 of 1973)		Provides for the definition, classification, use, operation, modification, disposal or dumping of hazardous substances.
Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act (No. 36 of 1947) and regulations	Sections 3-10	<ul style="list-style-type: none"> Control of the use of registered pesticides, herbicides (weed killers) and fertilisers. Special precautions must be taken to prevent workers from being exposed to chemical substances in this regard. Workers handling these remedies must also be registered in terms of the Act.
National Road Traffic Act (No. 93 of 1996) and regulations	Section 54	Transportation of dangerous goods.
National Veld and Forest Fire Act (No. 101 of 1998)	Chapter 2 Chapters 4 & 5	Promotes and regulates the formation of fire protection associations which aim to manage and coordinate fire protection and fire services in an area. Organisations are required to make and maintain firebreaks and fire-fighting equipment and personnel should a risk exist that a fire may start or spread from the premises.
Development Facilitation Act (Act 67 of 1995)	Chapter 5	Land development procedures excluding procedures relating to the development of small-scale farming.
Western Cape Provincial Land Use Planning Ordinance (No. 15 of 1985)		To control town and regional planning and is also cross linked to the EIA process.
Western Cape Provincial Land Use Planning Act (No. 3 of 2014)		To consolidate legislation in the Province pertaining to provincial planning, regional planning and development, urban and rural development, regulation, support and monitoring of municipal planning and regulation of public places and municipal roads .
Spatial Planning and Land Use Management Act (No. 16 of 2013)		<ul style="list-style-type: none"> Framework act for all spatial planning and land use management legislation. Provide for a uniform, effective and comprehensive system of spatial planning and land use management for the Republic. Ensure that the system of spatial planning and land use management promotes social and economic inclusion. Provide for development principles and norms and standards. Provide for the sustainable and efficient use of land. Provide for cooperative government and intergovernmental relations amongst the national, provincial and local spheres of government. Redress the imbalances of the past and to ensure that there is equity in the application of spatial development planning and land use management systems.
Land Survey Act (No. 8 of 1997)		To regulate the survey of land in South Africa.
Removal of Restrictions Act (No. 84 of 1967)		To alter, suspend or remove certain restrictions and obligations in respect of land and to provide for incidental matters.

4.1 Applicable Local Legislation and By-Laws

The Stellenbosch Municipality local legislation by-laws that may be applicable to the Kayamandi Project are listed in Table 2.

Table 2: Applicable Municipal By-laws

Legislation or By-Law	Description
IDP for the Stellenbosch Municipality 2017-2022 (May 2017)	The BA process considered the planning policies that govern the study area to ensure that the scale, density and nature of activities/developments are harmonious and in keeping with the sense of place and character of the area.
Stellenbosch Municipality SDF (May 2018)	
Stellenbosch Municipality Environmental Management Framework (EMF) (September 2018)	
Stellenbosch Municipality Zoning Scheme By-Law (2018)	The municipality is aiming to facilitate the development of ±4 000 to 6 000 residential opportunities as well as providing the required social and amenities and public services required to support the development. This by-law indicates that rezoning of properties from "Agricultural" to the required and suitable zoning as prescribed.
Stellenbosch Municipality Air Quality By-Law (June 2017)	This by-law is to ensure that air pollution is avoided, or where it cannot be altogether avoided, minimized and remedied within the municipality.
Stellenbosch Municipality By-Law Relating to Plantations, Parks, Gardens, Recreation Facilities and Nature Reserves	Section 3 This section provides general prohibition for any person who is in contact with nature reserves that are vested in or under the control of the council
	Section 4 Powers of the Council
	Section 6 Liability of the council
	Section 7 This section sets out penalties that can be imposed to any person who contravenes any provision of this by-law.
Stellenbosch Municipality Noise Control Policy (July 2018)	Section 3 Complaints This section sets out the procedure that is undertaken to deal with noise related complaints.
	Section 4 Disturbing Noise Procedure Should residual noise level differ by 10 dBA from the rating level then a disturbing noise procedure will be executed. SANS 10103 is used in the case of low frequency noise that exceeds the level specified.
	Section 5 Noise Nuisance Procedure
	Section 6 Machinery in Residential Areas An investigating officer is appointed to measure noise levels, should the noise levels exceed 50 dBA a written instruction will be issued to the responsible person to mitigate the noise.
	Section 10 This section sets out the procedure for lodging an application for the installation of synchronised generator units to the Noise Control officer for comment.
	Section 11 Construction noise When dealing with building construction noise complaints, should the noise be within the permitted National Building Control Regulation hours,
Air Quality Management Plan (AQMP) for the Stellenbosch Municipality (August 2013)	The Stellenbosch AQMP has been developed in terms of the NEM: AQA with the following goals: Air quality governance meets requirements to effectively implement the AQMP Reduce atmospheric emissions of harmful pollutants. Systems and tools are established to effectively implement the AQMP. The AQMP sets out ambient air quality standards according to national criteria.
Cape Winelands District Municipality-Personal Protective Equipment (PPE) policy for road Maintenance and Mechanical Workshop Employees, 2015	The purpose of this policy is to: Standardize PPE issued to all Provincial Road Maintenance employees, and Assist in the safe management of risks in the working environment.

5. Potential Authorisations/ Permits/ Licences required prior to the Project Commencement

Table 3 provides information on additional activities which may require authorisations / permits / licences from relevant government departments. The Contractor is to ensure that prior to the commencement of works, these authorisations / permits / licences have been obtained.

Table 3: Activities that Could Require an Authorisation / Permit / Licence

Activity	Type of Authorisation / Permit / License Required	Requiring Institution
Section 21 water use	Licence	DWS
Use of Treated Wastewater (Dust Suppression)	Approval	Department of Health (DOH)
Destroy, damage, deface, alter, remove from its original position, subdivide or change the planning status of a National Heritage Site	Permit	SAHRA / HWC
Health Permits for Hostels and Sanitation	Permit	DOH
Commencement of Construction Activities	Notify two weeks before commencement	DEA
Site establishment storm water & pollution control	Separate report	CoCT
Fuel storage	Permit	CoCT
Hazardous material route	Approval	DEA/ Department of Transport (DOT)/ Western Cape Provincial Department of Transport and Public Works (WC:DTPW)
Other hazardous substances	Permit	DEA
Project commencement	Notify	Department of Labour (DOL) and DEA
Land Use outside Road Reserve	Special consent approval	CoCT
Detail design (water, wastewater, roads design)	Approval	CoCT